

Office of Chief Counsel
Internal Revenue Service
memorandum

date: September 10, 1997

to: Andre' L. Re
National Director, Compliance Specialization CP:EX:CS

from: Robert M. Casey *RMCasey*
Senior Technician Reviewer CC:DOM:IT&A:6

subject: Alternative Minimum Tax and Environmental Tax
WTA-N-116630-97

This memorandum responds to your request to the Assistant Chief Counsel (Income Tax & Accounting) for assistance regarding the proper computation of the environmental tax imposed by section 59A of the Internal Revenue Code. Specifically, you asked "whether the environmental tax is deducted against book income to arrive at adjusted net book income, (line 5a) on Form 4626, for purposes of environmental tax computation." For the reasons expressed below, we have concluded that the answer to your question is no. In other words, adjusted net book income, for purposes of computing the environmental tax, is determined without regard to the environmental tax.

~~The environmental tax, imposed on corporations, is set forth in Code section 59A, which imposes a tax of .12 percent on the excess of "modified alternative minimum taxable income" over \$2 million. I.R.C. § 59A(a).~~

For years in which the book income adjustment was applicable, the term "modified alternative minimum taxable income" was defined as:

alternative minimum taxable income (as defined in section 55(b)(2)) but determined without regard to--

- (1) the alternative tax net operating loss deduction (as defined in section 56(d)), and
- (2) the deduction allowed under section 164(a)(5) (and the last sentence of section 56(f)(2)(B)).

Section 164(a)(5) of the Code provides a deduction for environmental taxes imposed by section 59A. In order to understand the reference to section 56(f)(2)(B), a brief discussion of the book income adjustment is necessary. In general terms, the book income adjustment, generally applicable to tax years beginning in 1987, 1988 and 1989, required that alternative minimum taxable income be increased by 50 percent of the excess of adjusted net book income over alternative minimum taxable income (computed without regard to the book income adjustment or the AMT net operating loss deduction). In defining

adjusted net book income, the Code required that Federal income taxes and certain foreign taxes be disregarded although they would otherwise be reflected in the taxpayer's applicable financial statement, which was the starting point for determining adjusted net book income. I.R.C. § 56(f)(2)(B). The last sentence of section 56(f)(2)(B), however, provided that "[n]o adjustment shall be made under this subparagraph for the tax imposed by section 59A." In other words, while as a general matter adjusted net book income did not take into account Federal income taxes, the environmental tax was taken into account, i.e., was deducted in arriving at adjusted net book income.

Thus, when Code section 59A requires that modified alternative minimum taxable income be computed by disregarding the deduction provided by the last sentence of section 56(f)(2)(B), the Code is requiring that adjusted net book income, for purposes of computing the environmental tax, not reflect the environmental tax. In other words, and in response to your specific question, for purposes of computing the environmental tax, adjusted net book income does not include a deduction for the environmental tax.

If you have any further questions regarding this matter, please contact John Aramburu of this office at 622-4960.
